



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S): Alexandre Marc Jacques Brouaux
APPLICATION NO.: 09/663,296
FILING DATE: September 15, 2000
TITLE: DYNAMIC GRAPHIC USER INTERFACE
EXAMINER: Unassigned
GROUP ART UNIT: 2674
ATTY. DKT. NO.: 21685-06149

RECEIVED
DEC 17 2002
OFFICE OF PETITIONS

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: BOX DAC, Commissioner For Patents, Washington, D.C. 20231, on the date shown below:

Dated: 12/10/02

By: *Rimma Budnitskaya*

Rimma Budnitskaya, Reg. No. 48,237

BOX DAC
OFFICE OF PETITIONS
COMMISSIONER FOR PATENTS
WASHINGTON, DC. 20231

PETITION UNDER 37 CFR 1.181 TO WITHDRAW HOLDING OF ABANDONMENT

Applicant respectfully submits that the holding of abandonment in this application is in error because the Applicant timely responded to the Notice to File Missing Parts, the failure to respond being given as the reason for abandonment. Per a phone conference with the USPTO senior legal advisor Karin Ferriter, the Applicant respectfully requests withdrawal of the holding of abandonment in this application.

STATEMENT OF FACTS

On November 13, 2000, the USPTO mailed a Notice to File Missing Parts of Nonprovisional Application (hereinafter "Notice to File Missing Parts") to the Applicant. The

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Notice to File Missing Parts required: 1) submission of a signed oath and declaration within a two-month statutory period and 2) payment of a missing parts surcharge.

On January 10, 2001, the Applicant mailed to the USPTO the following documents (EXHIBIT ONE):

1. Copy of the Notice to File Missing Parts (Form PTO-1533);
2. Declaration/Power of Attorney executed by the inventor on January 2, 2001;
3. Check in the amount of \$65.00 for the surcharge fee; and
4. Acknowledgment Postcard.

The USPTO received this submission on January 12, 2001, as shown by the date-stamp on an Acknowledgement Postcard that properly identified all the items submitted (EXHIBIT TWO). According to MPEP 503 the properly identified items include: “(a) applicant’s name(s); (B) title of invention; (C) number of pages of specification, claims (for nonprovisional applications), and sheets of drawing; (D) whether oath or declaration is included; (E) a list of any additional forms included with the application (e.g., application transmittal form, application data sheet, fee transmittal form, and/or provisional application cover sheet); and (F) amount and manner of paying the fee.” (MPEP 503, p. 500-13, *emphasis added.*) The instant Acknowledgment Postcard states that the Declaration and a check in the amount of \$65.00 have been submitted. MPEP 503 further states that the Patent Office’s policy regarding return postcards is: “The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off

and the postcard initialed by the person receiving the items.” MPEP 503, p. 500-15, *emphasis added*.

The postcard returned from the Patent Office has no items crossed off. Thus, the Patent Office itself has confirmed that all submitted items were received within the period for response. The Patent Office’s policy regarding return postcards is: “A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.” (MPEP 503, p. 500-14).

Between January 12, 2001 and November 22, 2002, the Applicant submitted various correspondence to the USPTO, such as an Information Disclosure Statement, Change in Power of Attorney, and Correspondence Address Change. No correspondence was received from the Patent Office in reply to these submissions.

On November 22, 2002, the Applicant received a Notice of Abandonment (EXHIBIT FOUR), mailed November 18, 2002, stating that the Applicant had failed to timely reply to the Notice of Missing Parts mailed on November 13, 2000.

Applicant’s response to the Notice of Missing Parts was received by the USPTO, as evidenced by the Acknowledgement Postcard. Applicant’s response included a copy of the Notice of Missing Parts prepared by the PTO that identified the application by its serial number, title, filing date, and inventor name. The transmittal forms prepared by the Applicant contained a minor typographical error identifying the application’s serial number, but correctly identified the application’s number, title, filing date, and inventor name. The transmittal forms identified the application by serial number 09/633,296 instead of the serial number 09/663,296.

The returned copy of the Notice to File Missing Parts, however, properly identified the application under its correct application serial number 09/663,296.

MPEP 502 states in part that “[a] minor error in the identification of the application can be corrected by the group provided the correct identification can be quickly discovered. Examples of minor errors are transposed numbers, typographical errors, and listing the parent application number.” MPEP 502, p. 500-6. Thus, the Patent Office could have quickly discovered the correct identification by either looking at the attached copy of the Notice to File Missing parts that properly identified the application by its serial number or by reviewing the correct information for title, filing date, and inventor name provided by the Applicant.

After reviewing the Notice of Abandonment, the Applicant discovered through the patent application retrieval (PAIR) system that the USPTO erroneously matched the response to the Notice to File Missing Parts timely submitted by the Applicant with the application serial number 09/633,296 instead of the application serial number 09/663,296 (EXHIBIT THREE). Thus, the Applicant’s response to the Notice to File Missing Parts was attached to the wrong file. Moreover, the Examiner of the application identified by serial number 09/633,296 apparently did not notice that he had received correspondence intended for a *clearly* different application and merely identified the response as “miscellaneous correspondence.” At no time was the Applicant notified of this error. In fact, the Applicant received the Notice of Abandonment almost two years after the application went abandoned.

On December 2, 2002, the Applicant’s representative, practitioner Rimma Budnitskaya, contacted USPTO senior legal adviser, Karin Ferriter, regarding the Notice of Abandonment. In view of the above, Ms. Ferriter recommended that the Applicant petition the USPTO to withdraw the holding of abandonment in this application and to expunge previously submitted

information. A petition to expunge has not been submitted with this petition but may be submitted at a later time.

POINTS TO BE REVIEWED

The Applicant respectfully submits that the holding of abandonment in this application is in error because on January 10, 2001 the Applicant did timely mail to the USPTO an executed Declaration/Power of Attorney prior to the January 13, 2001 deadline for responding to the Notice to File Missing Parts. Moreover, the Patent Office received the response on January 12, 2001. The response provided more than enough information needed to identify the appropriate application. Thus, the Applicant fully complied with the provisions of 37 CFR 1.8 (a) contrary to the reasons provided by the holding of abandonment.

ACTION REQUESTED

In view of the above, the Applicant respectfully requests withdrawal of the holding of abandonment in this application.

Respectfully submitted,
ALEXANDRE MARC JACQUES BROUAUX

Dated: _____

12/10/02

By: _____



Rimma Budnitskaya, Reg. No. 48,237
Fenwick & West LLP
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Palo Alto, CA 94306
Tel.: (415) 875-2401
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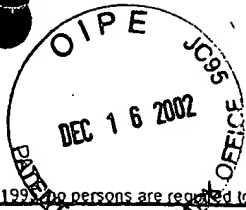
enclosures:

EXHIBIT 1) Response to the Notice to File Missing Parts, including: copy of the Transmittal Form including the Certificate of Mailing executed on January 10, 2001; copy of the Fee Transmittal Form for the surcharge for the Notice to File Missing Parts sent by the Applicant on January 10, 2001; copy of the Letter in Response to Notice to File Missing Parts executed on January 10, 2001; copy of the executed Declaration/Power of Attorney timely submitted by the Applicant on January 10, 2001 in response to the Notice to File Missing Parts; copy of the Notice to File Missing Parts sent by the Applicant on January 10, 2001; copy of the check number 74280 in the amount of \$65.00 for the surcharge fee.

EXHIBIT 2) Copy of the acknowledgment postcard for submission that is the subject of Exhibit 1, showing the January 12, 2001 date-stamp of the USPTO's mailroom.

EXHIBIT 3) Copy of the PAIR sheet for application serial number 09/633,296 indicating that the USPTO received the Applicant's submission on January 12, 2001 and matched it with the wrong application number.

EXHIBIT 4) Copy of the Notice of Abandonment received on November 22, 2002.



COPY

PTO/SB/17 (11-00)

Approved for use through 10/31/2002, OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

FEE TRANSMITTAL for FY 2001

Patent fees are subject to annual revision.

TOTAL AMOUNT OF PAYMENT (\$) 65

Complete if Known

Application Number 09/633,296
Filing Date September 15, 2000
First Named Inventor Brouaux, Alexander
Examiner Name unknown
Group Art Unit 2674
Attorney Docket No. 8058-PA01

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METHOD OF PAYMENT

1. ☒ The Commissioner is hereby authorized to charge indicated fees and credit any overpayments to:

Deposit Account Number 02-4070
Deposit Account Name Brown, Martin, Haller & McClain

- ☒ Charge Any Additional Fee Required Under 37 CFR 1.16 and 1.17
☒ Applicant claims small entity status. See 37 CFR 1.27

2. ☒ Payment Enclosed:

☒ Check ☐ Credit card ☐ Money Order ☐ Other

FEE CALCULATION

1. BASIC FILING FEE

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
101 710	201 355	Utility filing fee	
106 320	206 160	Design filing fee	
107 490	207 245	Plant filing fee	
108 710	208 355	Reissue filing fee	
114 150	214 75	Provisional filing fee	

SUBTOTAL (1) (\$) 0

2. EXTRA CLAIM FEES

Total Claims -20** = X =
Independent Claims -3** = X =
Multiple Dependent =

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description
103 18	203 9	Claims in excess of 20
102 80	202 40	Independent claims in excess of 3
104 270	204 135	Multiple dependent claim, if not paid
109 80	209 40	** Reissue independent claims over original patent
110 18	210 9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$) 0

*or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
105 130	205 65	Surcharge - late filing fee or oath	65
127 50	227 25	Surcharge - late provisional filing fee or cover sheet	
139 130	139 130	Non-English specification	
147 2,520	147 2,520	For filing a request for ex parte reexamination	
112 920*	112 920*	Requesting publication of SIR prior to Examiner action	
113 1,840*	113 1,840*	Requesting publication of SIR after Examiner action	
115 110	215 55	Extension for reply within first month	
116 390	216 195	Extension for reply within second month	
117 890	217 445	Extension for reply within third month	
118 1,390	218 695	Extension for reply within fourth month	
128 1,890	228 945	Extension for reply within fifth month	
119 310	219 155	Notice of Appeal	
120 310	220 155	Filing a brief in support of an appeal	
121 270	221 135	Request for oral hearing	
138 1,510	138 1,510	Petition to institute a public use proceeding	
140 110	240 55	Petition to revive - unavoidable	
141 1,240	241 620	Petition to revive - unintentional	
142 1,240	242 620	Utility issue fee (or reissue)	
143 440	243 220	Design issue fee	
144 600	244 300	Plant issue fee	
122 130	122 130	Petitions to the Commissioner	
123 50	123 50	Processing fee under 37 CFR 1.17(q)	
126 180	126 180	Submission of Information Disclosure Stmt	
581 40	581 40	Recording each patent assignment per property (times number of properties)	
146 710	246 355	Filing a submission after final rejection (37 CFR § 1.129(a))	
149 710	249 355	For each additional invention to be examined (37 CFR § 1.129(b))	
179 710	279 355	Request for Continued Examination (RCE)	
169 900	169 900	Request for expedited examination of a design application	

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

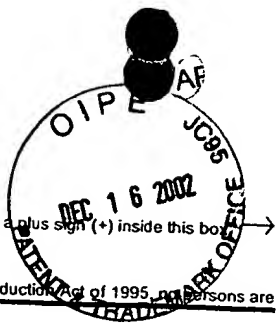
SUBTOTAL (3) (\$) 65

SUBMITTED BY		Complete (if applicable)	
Name (Print/Type)	KATHLEEN L. CONNELL	Registration No. (Attorney/Agent)	45,344
Signature	<i>Kathleen Connell</i>	Telephone	619-238-0999
		Date	Jan 16, 2001

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

09/663,296 - Exhibit 1



file

COPY

PTOSB/21 (08-00)
d for use through 10/31/2002. OMB 0651-0031
k Office: U.S. DEPARTMENT OF COMMERCE
unless it displays a valid OMB control number.

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	09/633,296
Filing Date	SEPTEMBER 15, 2000
First Named Inventor	Brouaux, Alexander
Group Art Unit	2674
Examiner Name	unknown
Attorney Docket Number	8058-PA01

Total Number of Pages in This Submission **7**

ENCLOSURES (check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input checked="" type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Return Postcard
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Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	BROWN, MARTIN, HALLER & McCLAIN KATHLEEN L. CONNELL	Reg. No. 45,344
Signature		
Date	Jan 10, 2001	

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: 01/10/01

Typed or printed name	KATHLEEN L. CONNELL
Signature	
Date	Jan 10, 2001

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